

REMARKS

Claims 1, 2, 4, 9, 18-21 and 24-28 stand rejected under 35 USC § 102(b) as being anticipated by Iacocca, U.S. Patent No. 5,120,164. Claims 1-4, 9, 18-21 and 24-28 stand rejected under 35 USC § 102(b) as being anticipated by Repka, U.S. Patent No. 5,495,696. Claims 5-8, 22 and 23 stand objected to as being dependent upon a rejected base claim. Claim 10 is rejected under 35 USC § 112, second paragraph as being indefinite. Claims 11-17 are allowed. Claim 10 is canceled. New claim 29 is submitted for examination. Claims 1-9 and 18-29 remain at issue.

Applicants wish to thank Examiner Singh for the courtesy extended in the telephonic interview of February 16, 2005. As indicated in the Interview Summary prepared by the Examiner and mailed February 24, 2005, claim 1 was discussed in light of the cited prior references of Iacocca, U.S. Patent No. 5,120,164 and Repka, U.S. Patent No. 5,495,696. The thrust of the discussion was the meaning of the term “utility line” in the claims. Applicants argued that reference character “28” of Iacocca and reference character “5” of Repka fail to meet the limitation of “utility line.” The Examiner disagreed. No agreement was reached on this issue.

Claim 1 is directed to a bedding for a utility line. The bedding comprises an elongate trench formed in the earth and a filter fabric lining a lengthwise segment of the trench having a select length. A first select depth of porous particulate material rests on the bottom of the trench and underlies a non-perforated utility line supporting the non-perforated utility line in the lengthwise segment. A second select depth of porous particulate material overlies the non-perforated utility line in the segment. The select length of the lengthwise segment, the first select depth and the second select depth are selected to store a select volume of water.

The invention comprises using existing or newly constructed beddings for utility lines to store storm water runoff. Thus, the invention allows slight modification of a utility line bedding to perform the valuable use of dissipation of storm water without requiring costly and disruptive construction or expansion of storm water sewers.

The Examiner characterizes Iacocca as disclosing a bedding for a utility line 28. Applicants contend that element 28 is not a utility line as defined in the specification and as understood by one of skill in the art, but is a drain tile configured to receive water from a surrounding gravel bed for conveying water away from the gravel bed. As discussed in greater

detail below, Applicants contend that such a drain pipe is outside the scope of “utility line,” and therefore Iacocca does not anticipate claim 1.

The Examiner also contends that Repka teaches a bedding for utility line 5. As with Iacocca, Applicants contend that the drainage pipe 5 of Repka is outside of the scope of a utility line as defined in the specification and as understood by one of skill in the art and thus Repka fails to anticipate claim 1.

At page 1, lines 18-20, the specification reads: “In areas of rapid growth it is not unusual for a municipality or a developer to need to expand water, sanitary sewers, gas lines, cable access, telephone lines, electrical lines or the like (collectively, “utility lines”) to meet the needs of a growing population.” The term “utility lines” is not intended to be so broad as to relate to any type of “line” that has “utility.” Rather, “utility line” is intended to mean a line deployed by a utility (a.k.a. a public utility) to provide a public service such as potable water, sewerage, gas, electricity, and telephone. “Utility” has a well recognized meaning the field of civil engineering and construction. Definitions from various dictionaries and glossaries are as follows:

UTILITY service provided by a public agency, can include electrical energy, potable water, sewage, gas, telephone or cable-vision. “The Wiley Dictionary of Civil Engineering and Construction,” compiled and edited by L.F. Webster, page 618 (1997) (Exhibit A)

UTILITY – A public or private concern engaged in the performance of some useful service, such as furnishing water, gas, electricity, or sewer facilities. Such a concern usually has a monopoly position in providing its service to a defined geographical area. “Water and Wastewater Control Engineering,” 3rd Edition, Glossary page 410 (1981) (Exhibit B)

UTILITY see public utility

PUBLIC UTILITY a public service such as water, gas, electricity, telephone, sewers, etc. “Dictionary of Architecture & Construction,” 3rd Edition, pages 974, 726 (2000) (Exhibit C)

UTILITY Service provided by a public agency, which can include electrical energy, potable water, sewerage, gas, telephone, or cablevision. “A Dictionary of Environmental & Civil Engineering,” Len Webster, page 488 (2000) (Exhibit D)

The above definitions are completely consistent with the definition of “utility line” provided in the specification. In other words, a utility line is a line or conveyance pipe used by a utility to provide a service such as electric energy, potable water, sewage, gas, telephone,

cablevision, etc. The term is not so broad as to include any kind of a pipe having utility within a gravel bed.

The consistency of Applicants' definition of "utility line" and the definitions gleaned from dictionaries in the relevant technical fields makes it clear that "utility line" does not extend to the drainage pipes of Iacocca or Repka. Rather, the drainage pipes of Iacocca and Repka are part of a localized system for collecting and conveying ground water away from a structure to be protected. While the "lines" of Iacocca and Repka have utility, they are not "utility lines" as the term is defined in the specification and understood in the art. Accordingly, Applicants respectfully submit neither Iacocca or Repka anticipate claim 1 or claims 2-4 and 9, which are dependent from claim 1.

Claim 11 is similar in scope to claim 1 and also recites a utility line within a porous particulate bed. Again, because "utility line" is distinct from the drainage pipe shown in Iacocca and Repka, Applicants respectfully submit claim 11 and claims 12-17, which are dependent therefrom, are allowable over the art of record.

Independent claim 25 is directed to a method of designing a utility line trench and includes the element of providing a non-perforated utility line within a porous particulate material bed. As set forth above, because neither Iacocca nor Repka teach a "utility line" as defined in the specification and understood by one of skill in the art, Applicants respectfully submit claim 25 and claims 26-28, which are dependent therefrom, are patentable.

Claim 10 has been cancelled, rendering moot the rejection of claim 10 under 35 USC § 112, second paragraph.

New claim 29 is similar in scope to claim 5, which has been indicated as allowable if rewritten in independent form, except it is broader in that the filter fabric wrap limitation is eliminated, there is no express recitation of a conduit providing liquid communication between a source of water and the trench, and the relative location of the drainage pipe and the non-perforated utility line is eliminated. No art of record shows the combination of elements recited in claim 29. Consideration and allowance of claim 29 is requested.

For the reasons set forth above, Applicants respectfully submit that the claims as presented herein are allowable over the art of record and reconsideration and issuance of a notice of allowance are respectfully requested. If it would be helpful to obtain favorable consideration of this case, the Examiner is encouraged to call and discuss this case with the undersigned.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to deposit account No. 19-5117 if not otherwise specifically requested. The undersigned hereby authorizes the charge of any required fees not included or any deficiency of fees submitted herewith to be charged to deposit account No. 19-5117.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. Bratschun", is written over a horizontal line.

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DATE: March 16, 2005
APPLICANT: McCORMICK
SERIAL NO.: 10/651,320
FOR: UTILITY LINE BEDDING FOR STORM WATER
MANAGEMENT AND STORM WATER MANAGEMENT
SYSTEM AND METHOD

RECEIPT IS HEREBY ACKNOWLEDGED OF:
REQUEST FOR CONTINUED EXAMINATION; AMENDMENT AND
REMARKS; CHECK FOR \$840

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3/16/2005

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DOLLARS

Commissioner of Patents and Trademarks

MEMO CH2M.44

[Signature]

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